



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

August 26, 2020

Mr. Erik Janus
10708 Mapleville Road
Hagerstown, MD 21742

**Re: Freedom of Information Act Request – EPA-2020-006522
Fee Waiver Determination**

Dear Mr. Janus:

This letter concerns the above-referenced Freedom of Information Act (FOIA) request, received by the U.S. Environmental Protection Agency (EPA), National FOIA Office (NFO) on August 24, 2020 in which you are seeking the following records: "Please provide all publically available supporting data, registration forms and communications surrounding the approval of the Section 18 Emergency Authorization for "SurfaceWise 2" by Allied BioScience (EPA Company # 92082), as reported in several major media outlets and via EPA press release on August 24, 2020. See for example: <https://www.epa.gov/newsreleases/trump-epa-approves-first-ever-long-lasting-antiviral-product-use-against-covid-19>; <https://news.aa.com/news/news-details/2020/American-Airlines-Boosts-Its-Clean-Commitment-With-Sustained-Virus-Killing-Coating-to-Help-Safeguard-Customers-From-Coronavirus-OPS-DIS-08/default.aspx>; and <https://www.prnewswire.com/news-releases/surfacewise2-becomes-first-antiviral-surface-coating-approved-by-epa-to-continuously-protect-against-covid-19-with-a-single-application-301117089.html>.

EPA has received your request for a fee waiver. Your request for a fee waiver was evaluated based upon the information you provided in support of your request for a fee waiver and EPA regulations concerning requests for a fee waiver. Your request does not contain enough information to support a finding that a fee waiver may be granted. Therefore, your request for a fee waiver is denied because your submission failed to demonstrate that the information disclosed in response to your request is likely to contribute significantly to public understanding of the operations or activities of the government.

EPA regulations provide a mechanism for requesters to seek records responsive to a FOIA request "without charge or at a charge reduced below" the agency FOIA fee schedule when the National FOIA Office determines "based on all available information, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 40 C.F.R. § 2.107(l)(1) (2019). EPA's regulations,

consistent with guidance from the Department of Justice, identify six factors for the Agency to consider, four for the contribution to public understanding and two for the requester's commercial interest.

To evaluate the contribution to public understanding, the Agency considers the following four factors: (1) the subject of the request; (2) the informative value of the information to be disclosed; (3) the contribution to an understanding of the subject by the public is likely to result from disclosure; and (4) the significance of the contribution to public understanding. *See* 40 C.F.R. § 2.107(l)(2)(i)-(iv). Fee waiver requests must address each of the factors. *See* 40 C.F.R. § 2.107(l)(5).

For the third factor above, EPA's regulations state that "The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. The Agency will consider a requester's expertise in the subject area and ability and intention to effectively convey information to the public. The Agency presumes that a representative of the news media will satisfy this consideration." *See* 40 C.F.R. § 2.107(l)(2)(iii).

For the reasons below, your fee waiver justification failed to adequately demonstrate that the information will be disseminated for the "public's understanding." *See* 40 C.F.R. § 2.107(l)(2)(iii). Your fee waiver justification merely stated: "Given the widespread important nature of the novel and inaugural decision regarding emergency approval of a "residual disinfectant," we request that a fee be waived as dissemination of how this approval was made is critically important to the ongoing nationwide public health response.

However, you have not addressed the EPA's regulatory third factor. Despite explaining that dissemination is "critically important," you have not described how the records will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to an individual understanding. The Agency will consider a requester's expertise in the subject area and ability and intention to effectively convey information to the public, but you have not provided any information for our consideration. Lastly, the Agency presumes that a representative of the news media will satisfy this consideration, but no details were provided for our consideration. *See* 40 C.F.R. § 2.107(l)(2)(iii). Therefore, your fee waiver request is denied.

You may appeal this fee waiver determination by email at hq.foia@epa.gov, or by mail to the EPA's National FOIA Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2310A), Washington, DC 20460 or through FOIAonline if you are an account holder. If you are submitting your appeal by hand delivery, courier service, or overnight delivery, you must address your correspondence to 1200 Pennsylvania Avenue, N.W., WJC-N Building, Room 5315, Washington, DC 20460. Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals **received** after the 90-calendar-day limit. Appeals received after 5:00 p.m. EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if

applicable, should be marked "Freedom of Information Act Appeal." Should you choose to appeal this determination, please be sure to fully address all factors required by EPA's FOIA Regulations, located at 40 C.F.R. § 2.107(l), in your appeal.

Additionally, you may seek dispute resolution services from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD 20740-6001; email, ogis@nara.gov; telephone, (202) 741-5770 or (877) 684-6448; or fax, (202) 741-5769.

Sincerely,

Kevin W. Hill
Attorney-Adviser
National FOIA Office